

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LABORERS INTERNATIONAL UNION OF : CIVIL ACTION
NORTH AMERICA, LOCAL NO. 199/847 :
WELFARE, PENSION, EDUCATION, and : NO. 02-CV-2871 (CW)
ANNUITY FUNDS, et al., :
Plaintiffs :
 :
v. :
 :
 :
DAN LEPORE & SONS, INC. :
Defendant. :

CLERK'S JUDGMENT

I, Michael E. Kunz, Clerk of the United States District Court for the Eastern District of Pennsylvania, do hereby certify that the docket entries in the above-entitled action indicate that the Summons and Complaint herein were filed on May 13, 2002, and that defendant, Dan LePore & Sons, Inc., was served with a copy of the Summons and Complaint on May 16, 2002, as substantiated by Plaintiffs' Affidavit of service filed with this Court.

I further certify that the docket entries indicate that the defendant has not filed an answer or otherwise moved with respect to the Complaint herein and that time to answer the Complaint has expired. The default of the defendant and Default Judgment is hereby noted and entered.

MICHAEL E. KUNZ, CLERK
United States District Court for the
Eastern District of Pennsylvania

Dated:

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**AFFIDAVIT IN SUPPORT OF AND REQUEST FOR
THE ENTRY OF JUDGMENT BY DEFAULT**

JONATHAN WALTERS, ESQUIRE, being duly sworn, hereby deposes and says:

1. I am counsel to Plaintiffs in the above-captioned matter. I am a partner in the law firm of Markowitz and Richman. I graduated Harvard College in 1971 and Harvard Law School in 1975. I am admitted to practice law in the Commonwealths of Pennsylvania and Massachusetts and the District of Columbia and have been admitted to practice in, but am on inactive status with, the State of California. I have spent over twenty five years representing labor organizations and jointly-administered employee benefit plans. When I perform work for such benefit plans and seek hourly compensation, I bill at the rate of \$285.00 per hour.

2. I am a member of the Bar of this Court and I make this Affidavit and Request pursuant to Rule 55 of the Federal Rules of Civil Procedure and in support of Plaintiffs' application for the Entry of Default and Default Judgement against defendant, Dan LePore & Sons, Inc.

3. This action was commenced on May 13, 2002 by the filing of a Complaint and the issuance of a Summons to recover employee benefits due pursuant to a collective bargaining agreement.

4. Copies of the Complaint and Summons were served upon the defendant on or about May 16, 2002 by a process server. A copy of the return certifying defendant's receipt of the Summons and Complaint has been previously filed with this Court.

5. The time within which defendant was required to answer and/or move this court in respect to the Complaint has expired and defendant has failed, neglected, and/or refused to answer.

6. In this action, Plaintiffs sought judgment in the principal amount of \$5,207.56, together with an Order requiring defendant to make future contributions in a timely manner and in accordance with the relevant collective bargaining agreement and Agreements and Declarations of Trust establishing the plaintiff benefit funds, as well as judgment for all additional, if any, sums found to be due pursuant to said audit, interest, attorney's fees, and costs of the court.

7. Plaintiffs have good and meritorious cause of action against defendant. The amount shown to be due plaintiffs by defendant in Plaintiffs' Statement of Damages is justly due and owing and while \$5,207.56 has been paid to the plaintiffs, such payments only occurred after the Complaint in this manner was filed and served, plaintiffs have incurred attorneys' fees and costs, which the defendant has failed and refused to pay.

8. Jurisdiction of the subject matter is based on the Employee Retirement Income Security Act of 1974, as amended, 20 U.S.C. 1132 et seq.

9. This Court has jurisdiction over this action pursuant to §301 of the Labor Management Relations Act, 20 U.S.C. §185 and pursuant to 28 U.S.C. §§1331 and 1337.

10. Defendant is not a minor, mentally incompetent, nor in the military service of the United States.

11. My fee in this matter is \$855.00. Said fee is reasonable and has been necessarily incurred and has been calculated at the hourly rate of \$285.00 as follows:

<u>Activities</u>	<u>Date</u>	<u>Hours</u>
Preparation and filing of Complaint and supporting documents, Correspondence to Clerk of Court and to Fund Administrator	May 9, 2002	1.6

Correspondence with Fund Administrator, Review of Correspondence from Fund Administrator	May 31, 2002	0.1
Review of File, Correspondence with Fund Administrator re: interim payments	June 16, 2002	0.2
Review of Correspondence from Fund Administrator re: interim payments	June 17, 2002	0.1
Preparation and filing of Motion for Default and supporting documents	July 2, 2002	1.0
Total Hours		<hr/> 3.0

In addition, paralegal services, totaling 1.2 hours and billed at the rate of \$75.00 per hour were performed on May 16, 2002 and included telephone calls to arrange for service of the Complaint, preparation of the Complaint for Service and the filing of the Return of Service with the Court.

12. Plaintiffs have incurred costs in conjunction with this matter in the amount of \$253.15 including a \$150.00 filing fee, \$45.98 service fee, and \$57.17 for postage, photocopying, and telephone costs.

13. I make this Affidavit based on my own personal knowledge, and swear that I am competent to testify to the above matter in a court of law.

BY: _____
JONATHAN WALTERS, ESQUIRE
Attorney I.D. No. 23900
1100 North American Building
121 South Broad Street
Philadelphia, PA 19107
(215) 875-3121
Attorney for Plaintiffs

Sworn to and subscribed
before me this day
of , 2002.

Notary Public

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WELFARE, PENSION, EDUCATION, and : NO. 02-CV-2871 (CW)
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Plaintiffs :
 :
vi. :
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 :
DAN LEPORE & SONS, INC. :
Defendant. :

ORDER AND DEFAULT JUDGEMENT

This action having been commenced on May 13, 2002 by the filing of a Summons and Complaint. On May 16, 2002, the defendant, Dan Lepore & Sons, was served with a copy of the Summons and Complaint as is substantiated by the Return of Service previously filed with this Court. Therefore, the defendant named herein, no having answered the Complaint, and the time for answering the Complaint having expired, it is **ORDERED, ADJUDGED, and DECREED :**

The plaintiffs have judgment against the defendant named herein in the amount of \$1,188.15 with interest thereon at the legal rate.

The defendant shall make all future contributions to the plaintiff benefit funds in a timely manner and in accordance with the applicable collective bargaining agreement and Agreement and Declaration of Trusts establishing the plaintiff benefit funds.

U.S.D.J

This judgment was entered on the docket on _____.

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ANNUITY FUNDS, <u>et al.</u> ,	:	
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	:	
vii.	:	
	:	
DAN LEPORE & SONS, INC.	:	
Defendant.	:	

STATEMENT OF DAMAGES

Principal Amount	\$ 0
Liquidated Amount	\$ 0
Interest	\$ 0

Costs, Fees, and Disbursements:

Filing Fee	\$ 150.00
Process Server	\$ 45.98
Photocopying and postage	\$ 57.17
Attorney's fees	\$ 855.00
Paralegal's fees	<u>\$ 90.00</u>

\$1,188.17

TOTAL JUDGMENT \$1,188.17